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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/177,387	10/23/98	HARTLEY	J 0942.2850004

STERNE KESSLER GOLDSTEIN & FOX  
1100 NEW YORK AVENUE NW  
SUITE 600  
WASHINGTON DC 20005-3934

HM22/0522

EXAMINER
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YUCEL, I

ART UNIT	PAPER NUMBER
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1636

17

DATE MAILED:

05/22/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/177,387**

Applicant(s)

**Hartley et al.**

Examiner

**Remy Yucel**

Group Art Unit

**1636**



☒ Responsive to communication(s) filed on Mar 8, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 26, 28-35, and 52-88 is/are pending in the application.

Of the above, claim(s) 53-88 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 26, 28-35, and 52 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10,13,15

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

Claims 26, 28-35 and 52-88 are pending in the application.

This Office action is in response to the amendments filed 08 March 2000 and 22 March 2000.

#### ***Continued Prosecution Application***

The request filed on 23 December 1999 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/177,387 is acceptable and a CPA has been established. An action on the CPA follows.

#### ***Election/Restriction***

Newly submitted claims 53-88 are directed to an invention that is independent or distinct from the invention originally claimed for the reasons set forth in the restriction requirement mailed 15 March 1999.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 53-88 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant would have been able to change the group of claims under examination in the instant CPA had Applicant indicated in the request for CPA that another group as set forth in the restriction requirement mailed 15 March 1999 was being elected. Because Applicant did not indicate another group, the election made in Paper 6, filed 15 April 1999 is carried over to the instant CPA.

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***Response to Amendment***

Claims 26-29 and 31-35 and newly added claim 52 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bebee et al. for the reasons set forth in the Office action mailed 24 June 1999. Applicant has not chosen to traverse this rejection in either of the preliminary amendments filed 08 March 2000 and 22 March 2000; therefore there are no arguments to address regarding the instant rejection.

Claims 26-29 and 31-35 and newly added claim 52 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby et al., Snaith et al. or Hartley et al. in view of Ausubel et al. and further in view of Padgett et al. or Grose et al. for the reasons set forth in the Office action mailed 24 June 1999. Applicant has not chosen to traverse this rejection in either of the preliminary amendments filed 08 March 2000 and 22 March 2000; therefore there are no arguments to address regarding the instant rejection.

The rejection of claims 27-29, 34 and 35 under 35 U.S.C. 112, second paragraph has been withdrawn in light of Applicant's amendments.

Claim 30 stands rejected under 35 U.S.C. 112, second paragraph for the reasons set forth in the Office action mailed 24 June 1999.

***Conclusion***

This is a CPA of applicant's earlier Application No. 09/177,387. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the

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grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR § 1.6 (d)). The Group 1600 FAX numbers are (703) 308-4242 or (703) 305-3014. Unofficial faxes may be sent to the examiner at (703) 305-7939. NOTE: If applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Remy Yucel, Ph. D. whose telephone number is (703) 305-1998. The examiner can normally be reached on Monday through Fridays from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. George Elliott can be reached at (703) 308-4003.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
Remy Yucel, Ph. D.  
Primary Patent Examiner  
Technology Center 1600  
May 20, 2000